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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,509	12/03/1999	ANTHONY BEVERINA	8594-001-64	2741
24510	7590	09/20/2006	EXAMINER	
DLA PIPER US LLP ATTN: PATENT GROUP 1200 NINETEENTH STREET, NW WASHINGTON, DC 20036			PHAN, THAI Q	
			ART UNIT	PAPER NUMBER
			2128	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/453,509	BEVERINA ET AL.
Examiner	Art Unit	
Thai Phan	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 July 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-12, 44 and 47 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-12, 44 and 47 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ . 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

This Office Action is in response to the Preappeal Brief conference decision made on 07/14/2006. The finality was withdrawn. Claims 1-12, 44, and 47 are pending in the action.

### ***Double Patenting***

Claims 1-12, 44, and 47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-14, 42-43 of copending Application No. 09/853,690. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to a method of accessing a risk of a terrorist attack on a site such as a site in communication networks, a physical plant, a manufacture, production facility, etc. Claims in the related patent application 09/853,690 anticipates the method and steps for accessing a risk of the attack in the network facility.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12, 44 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Bergman et al, US patent no. 6,442,694, and further in view of Hill et al, US patent no. 6,088,804.

As per claim 1, Bergman discloses a method and apparatus (system) for modeling and isolating faults in a communication network with feature limitations very similar to the claimed invention. According to Bergman, the system (apparatus) includes

Hardware requirements such as a system memory, an input device, a display device, system processor coupled between them for processing input data,

Means for inputting information about a site of potential attacks (terrorize or local attacks) (cols. 14-24),

Means for constructing a model of the location or site based on input from the user (col. 18, line 18 to col. 19, line 8, for example),

Accepting information from the threat and determining an accessibility of the site to the threat of attack (col. 6, lines 44-47, cols. 18-20),

Determining a probability of attack or fault detection for the local attack or at the delivery point due to fault propagation, data stream flow, signal crossing or jamming at network nodes or paths, fatigue components, applications, network flows, capability, etc, based in part on a trigger event and fault propagation (cols. 10-12, col. 18, line 34 to col. 19, line 9, col. 23, lines 10-22, for example), and

Calculating a risk based on the accessibility and probability of failure occurrence or fault detection as claimed (col. 6, lines 44-47, col. 11, lines 35-39, col. 18, lines 20-

25, for example). Bergman does not expressly disclose simulated attacks to predict attack occurrence or determine a prediction of a terrorist attack as claimed. Such feature is however well-known in the art. In fact, Hill teaches simulating attack threat to predict all possible types of attacks, a site of attack in a hierarchy network, most likely threat vector, etc. (col. 7, lines 40-45, col. 8, lines 50-58, col. 9, lines 35-59), for exemplary.

This would motivate practitioner in the art at the time of the invention was made to combine the attack simulation and training attack signature as taught in Hill above into the network attack modeling and risk assessment in the attack as disclosed in Bergman in order to predict attack occurrence in a hierarchy network, to access threat vector, type of attack through attack signatures, etc (see Hill).

As per claim 2, Bergman discloses the Bayesian analysis techniques can be used to calculate consequence and taken actions as claimed (col. 7, lines 1-62, for example).

As per claim 3, Bergman discloses action models and various consequences in the analysis.

As per claims 4-6, Bergman anticipates the claimed limitations for attack detection and faults propagation like threat vector as claimed.

As per claim 7, Bergman discloses a method and apparatus (system) for modeling and isolating faults in a communication network with feature limitations very similar to the claimed invention. According to Bergman, the system (apparatus) includes

Hardware requirements such as a system memory, an input device, a display device, system processor coupled between them for processing input data,

Means for inputting information about a site of potential attacks (terrorize or local attacks) (cols. 14-24),

Means for constructing a model of the location or site based on input from the user (col. 18, line 18 to col. 19, line 8, for example),

Accepting information from the threat and determining an accessibility of the site to the threat of attack (col. 6, lines 44-47, cols. 18-20),

Determining a probability of attack or fault detection for the local attack or at the delivery point due to fault propagation, data stream flow, signal crossing or jamming at network nodes or paths, fatigue components, applications, network flows, capability, etc, based in part on a trigger event and fault propagation (cols. 10-12, col. 18, line 34 to col. 19, line 9, col. 23, lines 10-22, for example), and

Calculating a risk based on the accessibility and probability of failure occurrence or fault detection as claimed (col. 6, lines 44-47, col. 11, lines 35-39, col. 18, lines 20-25, for example). Bergman does not expressly disclose simulated attacks to predict attack occurrence or determine a prediction of a terrorist attack as claimed. Such feature is however well-known in the art. In fact, Hill teaches simulating attack threat to predict all possible types of attacks, a site of attack in a hierarchy network, most likely threat vector, etc. (col. 7, lines 40-45, col. 8, lines 50-58, col. 9, lines 35-59), for exemplary.

This would motivate practitioner in the art at the time of the invention was made to combine the attack simulation and training attack signature as taught in Hill above into the network attack modeling and risk assessment in the attack as disclosed in Bergman in order to predict attack occurrence in a hierarchy network, to access threat vector, type of attack through attack signatures, etc (see Hill).

As per claims 8-12, due to the similarity of claims 8-12 to claims 2-6 above, claims 8-12 are also rejected in like manner.

As per claims 44 and 47, Bergman anticipates attack events and fault occurrences with historical data or causality for attack analysis (cols. 6-8).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-12, 44, and 47 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US patent no. 5,153,366, issued to Lucas, Thomas, on Oct. 1992

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Phan whose telephone number is 571-272-3783. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sept. 14, 2006

*Thai Phan*  
Thai Phan  
Patent Examiner